

July 2, 2015

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Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW, Room 10276  
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Re: “Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (SAFMRs) in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs; Advanced Notice of Proposed Rulemaking,” 80 Fed. Reg. 31332 (June 2, 2015)

Dear colleagues,

We are writing on behalf of the undersigned housing and civil rights organizations to express our support for HUD’s proposal to implement Small Area FMRs to more metropolitan areas, to expand access to high opportunity communities for low income families with children. We also respond to the specific questions posed by HUD and suggest areas for improvement in the proposed rule.

The powerful recent research by Raj Chetty and his colleagues on economic and educational benefits for children who move to lower poverty neighborhoods<sup>1</sup> reinforces the earlier research on health and educational benefits of moving to less segregated environments.<sup>2</sup> This research confirms our view that not only is housing choice a right under the Fair Housing Act, but the attendant goal of eliminating segregated housing patterns is also a powerful policy priority that is critical to achieving other national goals in education, economic mobility, and health.

The current system for setting Housing Choice Voucher (HCV or “Section 8”) rents at the 40<sup>th</sup> or 50<sup>th</sup> percentile of regional rents has had the predictable effect of pulling regional rents down to a level that is overly generous in high density, higher poverty areas, while denying access to a reasonable number of rentals in higher cost neighborhoods. This system has been a contributing factor to racial concentration and segregation in the HCV program.<sup>3</sup>

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<sup>1</sup> Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, “The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment,” *The Equality of Opportunity Project* (2014): [www.equality-of-opportunity.org/images/mto\\_paper.pdf](http://www.equality-of-opportunity.org/images/mto_paper.pdf).

<sup>2</sup> Jens Ludwig et al., “Neighborhoods, Obesity, and Diabetes – A Randomized Social Experiment,” *The New England Journal of Medicine* 365 (2011): 1509-1519; Heather Schwartz, “Housing Policy is School Policy,” *The Century Foundation* (2010), [www.tcf.org/assets/downloads/tcf-Schwartz](http://www.tcf.org/assets/downloads/tcf-Schwartz); Roslyn Arin Mickelson, “School Integration and K-12 Educational Outcomes: A Quick Synthesis of Social Science Evidence,” *The National Coalition on School Diversity, Research Brief No. 5* (2015), [www.school-diversity.org/pdf/DiversityResearchBriefNo5.pdf](http://www.school-diversity.org/pdf/DiversityResearchBriefNo5.pdf).

<sup>3</sup> Ingrid Gould Ellen and Keren Merten Horn, “Do Federally Assisted Households Have Access to High Performing Public Schools?” *Poverty and Race Research Action Council* (2012), [www.prrac.org/pdf/PRRACHousingLocation&Schools.pdf](http://www.prrac.org/pdf/PRRACHousingLocation&Schools.pdf); Molly W. Metzger, “The Re-concentration of Poverty: Patterns of Housing Voucher Use, 2000 to 2008,” *Housing Policy Debate* 24, no. 3 (2014): 544-567.

Implementation of Small Area FMRs would rectify these problems by giving families similar access to communities throughout a metropolitan area, by pegging Fair Market Rents to the average rent in each zip code. The initial implementation of Small Area FMRs in Dallas (in response to a federal lawsuit there) showed that SAFMRs actually do open up new housing opportunities for low income families.<sup>4</sup> We have previously commented on the potential benefits of this new system,<sup>5</sup> and the need for HUD to move more quickly to implement a subsequent pilot study to confirm the value of the SAFMR approach in different types of markets.<sup>6</sup> Although we continue to be frustrated by the slow pace of implementing the Small Area FMR system more broadly, we are pleased to see that HUD plans to begin implementation of the program initially in some of our most segregated regions.

### **Response to specific HUD questions**

#### *1. Measurement of undue voucher concentration: What poverty rate and concentration level should be used in determining the criteria for selecting SAFMR areas?*

We agree with the use of neighborhood poverty rate to measure the degree of voucher concentration, rather than the current approach in the 50<sup>th</sup> percentile rule,<sup>7</sup> which looks at neighborhood clustering without regard to neighborhood characteristics.

In terms of what neighborhood poverty threshold should be used, as HUD recognizes in the Notice, the effects of concentrated poverty begin to appear at 20% neighborhood poverty rate, and accelerate significantly above that level. Since HUD should generally try to avoid increasing neighborhood poverty rates through its own housing programs, it makes sense to use 20% poverty as the yardstick with which to measure undue voucher concentration. This approach would also help to include smaller metro areas that may have significant voucher concentration and racial segregation, yet few neighborhoods exceeding 30% poverty rates. We would also urge HUD, based on its authority under 42 U.S.C. §3608 (AFFH), to include a measure that looks at the proportion of vouchers in racially concentrated areas.

The Notice also inquires, “[s]hould the Department attempt to target areas where concentration of voucher tenants in high-poverty census tracts, however defined, is generally higher than the concentration of rental units?” We are not sure what the best answer is here, since rental unit concentration is not independent of race and poverty concentration; rather it is a function of exclusionary housing policies and uneven metropolitan development. It may be sufficient just to measure the proportion of vouchers in higher poverty neighborhoods.

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<sup>4</sup> Robert Collinson and Peter Ganong, “Incidence and Price Discrimination: Evidence from Housing Vouchers,” Joint Center for Housing Studies, Harvard University, (2013), [www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w13-7\\_ganong.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w13-7_ganong.pdf).

<sup>5</sup> Comments on Docket No. FR-5413-N-01, Section 8 Housing Choice Voucher Program – Demonstration Project of Small Area Fair Market Rents in Certain Metropolitan Areas for Fiscal Year 2011,” July 12, 2010, [www.prrac.org/pdf/fair\\_housing\\_comments\\_on\\_Small\\_Area\\_FMRs\\_7-12-10.pdf](http://www.prrac.org/pdf/fair_housing_comments_on_Small_Area_FMRs_7-12-10.pdf).

<sup>6</sup> “Implementing the Small Area FMR Demonstration,” April 8, 2011, [www.prrac.org/pdf/Civil\\_rights\\_Small\\_Area\\_FMR\\_delay-%204-8-11.pdf](http://www.prrac.org/pdf/Civil_rights_Small_Area_FMR_delay-%204-8-11.pdf).

<sup>7</sup> 24 CFR §888.113(c).

*2. SAFMR effectiveness: What percentage of an area's rental stock should be above and below the FMR?*

If HUD is planning to limit the number of metropolitan areas to which the new rule applies, it makes sense to apply the SAFMR to those areas where the new rule would make the most difference – and these are the metros with the most intensive voucher concentration (see above) and the areas with the largest range of rental unit costs. Since HUD currently permits PHAs to set payment standards above 110% or below 90% of the metropolitan FMR, we agree that it makes sense to use the number of units in SAFMR zip codes above and below this existing range as a measure.

HUD should also consider that metropolitan areas with only a few communities above the FMR may also be areas where exclusionary suburban jurisdictions have been most successful in excluding multifamily rental housing – including some of these areas in this rule could have a powerful impact without utilizing a large number of vouchers.

*3. Program scale: In terms of number or percentage of metropolitan-area vouchers (which is roughly 1.9 million), what should be the size of the SAFMR program?*

We would eventually like to see the Small Area FMR approach extended nationwide, and we recognize that the program over time will be cost-neutral, as rent overpayments gradually decrease in lower cost areas. However, we understand that the current proposal seeks to limit the scope of the program to areas eligible for the current 50<sup>th</sup> percentile FMR rule (in part, to capture the cost savings of moving away from the 50<sup>th</sup> percentile approach in these metro areas). To maximize the impact of this approach, we would support expanding the SAFMR program based on the total number of vouchers that have historically been eligible for inclusion under the 50<sup>th</sup> percentile approach.

*4. PHA or metropolitan-wide: Should SAFMRs apply to all PHAs in a metropolitan area, or only to PHAs that display a pattern of HCV tenant concentration in high-poverty census tracts?*

The most important outcome of a shift to Small Area FMRs, by design, is to increase access to all communities in the metropolitan area, not just those communities where rents are at or below the regional average. Limiting this regional program innovation to a PHA's jurisdiction would largely defeat the purpose, unless the PHA were a large regional entity with jurisdiction across the entire range of metropolitan communities.

*5. Voluntary participation: Should a PHA be allowed to use SAFMRs even if the PHA or the underlying metropolitan area would not qualify for the use of SAFMRs?*

This is an excellent and long overdue idea. Currently those non-MTW PHAs that want to adjust rents upward in high opportunity areas have to go through a cumbersome process to seek HUD approval for exception payment standards above 110% of the FMR. While HUD has recently streamlined this process by permitting SAFMRs to be used in requests up to 120% of the FMR, higher adjustments require substantial documentation and delay.

Allowing PHAs to make SAFMR adjustments more easily would also help jurisdictions comply with their Affirmatively Furthering Fair Housing obligations.

*6. PBV Use of SAFMRs: Should SAFMRs be applied to PBVs at least for future PBV projects?*

We support this approach, as it will help to incentivize more housing development and housing preservation in high opportunity, higher cost neighborhoods.

*7. Success Rate Payment Standards: In addition to using Small Area FMRs as a tool to alleviate concentrations of voucher tenants in high poverty areas, should Small Area FMRs also be used in areas that qualify for success rate payment standards?*

HUD should retain its success rate payment standard policy. But in metropolitan areas where SAFMRs are in effect, success rate payment standards should be set at the 50<sup>th</sup> percentile SAFMR.

### **Other issues of concern**

As HUD reviews comments on the Advance Notice of Proposed Rulemaking, we ask that these additional questions be addressed:

*Greater accuracy in small area rent calculations:* As noted by the Center on Budget and Policy Priorities in their recent policy brief,<sup>8</sup> in a number of metro areas, Small Area FMR calculations included in the annual October FMR release have appeared to be below actual neighborhood rent levels in those areas. By the time HUD is ready to replace the 50<sup>th</sup> percentile rule with a new Small Area FMR rule, some testing should be done to check the relation of the SAFMR formula to actual rents, particularly in the targeted metro areas, and to make upward adjustments as needed.

*Zip codes that straddle low and high rent areas:* Since U.S. postal zones did not evolve in the same manner as segregated municipal land use and school district boundaries, it is not uncommon to find several zip codes in a metro area that encompass a wide range of neighborhood types. The lower rents in the higher density parts of these types of zip codes tend to pull the average rent down to a level that limits access to the higher opportunity areas of the zip code. This may also cut off children's access to high performing schools, where the zip code encompasses more than one school attendance zone. In order to address this issue, we recommend that the HUD field office have the authority to subdivide zip codes that exhibit widely varying rents into high and low rent sections, for purposes of calculating the SAFMR.

*Zip codes with too few units:* Current practice in the SAFMR demonstration allows HUD to shift to the regional FMR for zip codes that have too few rentals for a valid statistical count. This approach makes little sense, since these are usually the most exclusionary

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<sup>8</sup> Will Fisher, "Neighborhood-Based Subsidy Caps Can Make Housing Vouchers More Efficient and Effective," Center on Budget and Policy Priorities (June 2015), [www.cbpp.org/research/housing/neighborhood-based-subsidy-caps-can-make-housing-vouchers-more-efficient-and](http://www.cbpp.org/research/housing/neighborhood-based-subsidy-caps-can-make-housing-vouchers-more-efficient-and).

zip codes in the region! For areas like this, we recommend that the HUD field office select an appropriate SAFMR, based on an analysis of comparable town markets within the metro area.

*Mobility counseling assistance:* In order to maximize the impact of this expansion, HUD should prioritize the metro areas selected for eligibility for housing mobility counseling funds, from whatever source can be made available in the future (including a portion of funds from the HUD Housing Counseling program).

Thank you for the opportunity to comment on the Advance Notice of Proposed Rulemaking. We urge HUD to move as quickly as possible to issue a Proposed and Final Rule so that this new approach can go into effect no later than the 2017 fiscal year.

Sincerely,

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